

**CHANGE**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 19

11/28/94

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE: This change transmits Compliance and Enforcement Bulletin No. 94-1, Streamlined Enforcement Test and Evaluation Program.

2. EXPLANATION OF CHANGES: This change transmits Compliance and Enforcement Bulletin No. 94-1, which sets forth implementing guidance for the Federal Aviation Administration's Streamlined Enforcement Test and Evaluation Program, which was recommended by the Vice President's National Performance Review. This program emphasizes shorter timeframes for processing certain civil penalty cases involving individuals presenting deadly or dangerous weapons for screening at airport checkpoints or in checked baggage ("weapons cases").

The program will be tested at two FAA regions--Great Lakes and Southwest--for a period of 1 year beginning December 1, 1994.

3. DISPOSITION OF TRANSMITTAL: After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix	6/17/91	ix	6/17/91
x	2/4/93	x	11/28/94
		157 thru 181	11/28/94

  
David R. Hinson  
Administrator

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS/IA/ Initiated By: AGC-320  
VS-3;A-XYZ;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3;  
A-FAS/FAC/FCS-0;A-FAF/FAT/FIA-0(LTD);ZFS-325



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COMPLIANCE/ENFORCEMENT BULLETIN NO. 94-1

SUBJECT: Streamlined Enforcement Test and Evaluation Program.

1. BACKGROUND: On September 7, 1993, the Vice President's National Performance Review published a report entitled "From Red Tape to Results: Creating a Government that Works Better and Costs Less." That report included a recommendation that the FAA streamline its civil penalty enforcement process by eliminating several of the procedural steps it takes to issue civil penalties in certain minor, uncontested cases. The FAA has determined that streamlined procedures would be most appropriately tested in certain legal enforcement actions that upon initial review appear to be simple and factually straightforward and are uncomplicated to process. On August 26, 1994, Special Federal Aviation Regulation No. 72 (SFAR) was issued revising part 13 of the Federal Aviation Regulations (FAR), Investigative and Enforcement Procedures, as it pertains to the administrative assessment of civil penalties, to establish a program to test streamlined procedures for assessing penalties in certain cases. The proposed changes are intended to streamline the enforcement process by notifying individuals of certain violations and processing these actions within reduced timeframes. The program will be tested only in certain cases against individuals submitting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage where the amount of the proposed civil penalty is less than \$5,000.

2. ACTION: Those regions processing actions under the test program should follow the guidance set forth in this bulletin in lieu of paragraphs a through i of Appendix 1, Compliance/Enforcement Bulletin No. 90-10. Those regions not processing actions under the test program should follow the guidance contained in Appendix 1, Compliance Enforcement Bulletin No. 90-10, as well as the guidance set forth in paragraph 3i. of this bulletin.

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3. GUIDANCE:

a. General. The test program will apply only to certain alleged violations by individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage for which a civil penalty under \$5,000 is proposed. While the FAA considers these violations to be serious, the initial evaluation and processing of most of these cases tends to be uncomplicated. Violations of weapons prohibitions for which a penalty of \$5,000 or more is sought ordinarily are more factually complex and involve evidence of several aggravating factors. As a result, these cases tend to be more difficult to process, and, therefore, would not be appropriate for handling under the test program. The FAA does not intend to apply this test program to complex civil penalty actions, including factually complicated cases under \$5,000. For instance, cases involving artful concealment of a weapon, explosive, or incendiary, by their very nature, ordinarily involve subjective inferences and circumstances that render a case factually complex because of the nature of the evidence needed to prosecute successfully. While "artful concealment" violations by nonticketed passengers would carry a penalty no higher than \$1,000, these types of violations would not be subject to the streamlined enforcement process for the reasons stated above.

The regulatory changes in SFAR No. 72 will be tested in two FAA regions (Great Lakes and Southwest) at three airports (Dallas/Fort Worth International Airport, O'Hare International Airport, and Indianapolis International Airport). The test program may be extended to violations at other airports or regions during the duration of the test program.

b. Initial civil penalty action.

(1) Notice of Violation. A civil penalty action is initiated by issuing a notice of violation (NOV) pursuant to the procedures in SFAR No. 72 and the guidance in this bulletin. The NOV will be issued by the appropriate division manager or deputy division manager of the Civil Aviation Security regional office pursuant to section B of the SFAR. FAA investigative personnel should consult

paragraph 1201b. of this order before initiating a legal enforcement action under this program.

(a) The NOV should set forth the facts alleged, the regulation(s) allegedly violated, and the civil penalty proposed. The NOV should contain a statement showing how the facts constitute a violation of the cited regulation(s).

(b) A form NOV has been created, and ordinarily should be used in cases under this test program. See Figure 1, "Notice of Violation." Each applicable block should be checked and each applicable section of the NOV should be completed with appropriate information in sufficient detail so that the alleged violator can know and understand the charges.

(c) The NOV proposes to assess a civil penalty in a specific amount, and in appropriate cases described below, may also contain a settlement offer to resolve the case immediately with a reduction of the proposed civil penalty. The proposed civil penalty, and any settlement offer, must be stated specifically in the appropriate spaces on the NOV.

(2) Settlement offer in the NOV. In appropriate cases, the FAA may extend to the respondent an offer to resolve the case immediately with a reduction of the proposed civil penalty, on the condition that within 30 days from receipt of the NOV, respondent pays the penalty or agrees to issuance of an order assessing civil penalty in the reduced penalty amount. Generally, this penalty amount will be 50 percent of the proposed civil penalty. The settlement should be offered in all cases under this program except those where the FAA determines that the respondent has a history of involvement in similar incidents; the information available indicates that the violation was intentional; or the FAA has reason to believe that felony charges against the respondent may result based on the facts and circumstances surrounding the violation.

The settlement offer of a reduced penalty expires if the amount is not paid within 30 days, or if, within the

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30-day period, the respondent does not agree to the issuance of an order assessing civil penalty in the reduced penalty amount. If the settlement amount is not paid within 30 days, or if, within the 30-day period, the respondent fails to request the issuance of an order assessing civil penalty in the reduced penalty amount, the respondent is subject to the full amount of the civil penalty proposed in the NOV.

If settlement discussions ensue after the 30-day deadline for payment, absent evidence indicating a financial inability to pay, or some other, extraordinary circumstance, the case should not be settled for an amount that would represent a reduction of 50 percent or more of the proposed civil penalty.

(3) Attachment to the NOV. An option sheet should be sent with the NOV. See Figure 2, "Option Sheet." In the option sheet, the alleged violator is advised of the alternatives available for responding to the NOV. The alleged violator must elect one or more of the numbered paragraphs, as appropriate, which describe the different alternatives. The alleged violator may indicate that election on the option sheet. Alternative 1 is to pay the proposed civil penalty (or settlement amount) within 30 days, or to request, within 30 days, that an order assessing civil penalty be issued in the penalty (or settlement) amount. Alternative 2 is to submit information or material demonstrating that a violation of the regulations did not occur or the penalty amount is not warranted by the circumstances. Alternative 3 is to submit a written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay the proposed penalty or showing that payment would prevent the person from continuing in business. Alternative 4 is to request an informal conference with an agency attorney. Alternative 5 is to request a hearing. The option sheet also provides a means for the respondent to designate a representative. A copy of section 13.16 and part 13, subpart G of the FAR and SFAR No. 72 should also be sent with the NOV.



(4) Service. The division manager or deputy division manager of the appropriate Civil Aviation Security regional office should send the NOV to the individual respondent. The NOV should be sent by certified mail, return receipt requested or personal delivery. If the NOV is returned as undeliverable, the Civil Aviation Security regional office should take appropriate steps to verify the address. The NOV then should be resent immediately by certified mail, return receipt requested and regular mail to the most recent, available address for the respondent.

(5) Time for submission of a response by the respondent. Section B of SFAR No. 72 requires the respondent to submit a response to the NOV not later than 30 days after receipt of the NOV. For purposes of this regulation, timely submission of a response is deemed to have occurred when the response either is put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the NOV the respondent places a response in the mail, the response is timely.

If alternative 1 is chosen in response to the NOV, the respondent should mail the completed NOV option sheet to the appropriate Office of the Assistant Chief Counsel. If the respondent chooses to pay the penalty immediately, the completed NOV option sheet should be sent to the appropriate Office of the Assistant Chief Counsel, and the payment should be sent to the appropriate Office of Accounting. The payment sent to the Accounting Office should be identified by the case number, which should be written on the face of the certified check or money order. If the respondent selects any of the other options, the respondent should return the completed NOV option sheet to the appropriate Office of the Assistant Chief Counsel. The Office of the Assistant Chief Counsel will notify the division manager or deputy division manager of the Civil Aviation Security regional office upon receipt of the completed NOV option sheet.

d. Informal procedures. In cases processed under this test program, section B of SFAR No. 72 provides an opportunity for a person to participate in informal procedures by submitting written information, participating in an informal conference with an FAA attorney, or both. The informal conference may be held by telephone or in

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person with an FAA attorney in accordance with the procedures set forth in paragraph 1207 of this order.

e. Coordinating and reevaluating the case. When the respondent submits evidence, information, or views in writing or during an informal conference, agency counsel, and the division manager or deputy division manager of the Civil Aviation Security regional office must consider the evidence or information and reexamine the NOV. Agency counsel, upon consultation with the program office, should make a determination of whether a modification of the alleged regulatory violations and the proposed penalty stated in the NOV are warranted based on the information submitted by the respondent. Allegations that are disproved must be withdrawn. If the sanction proposed is determined to be excessive, it must be reduced appropriately. Unless matters not previously taken into consideration in issuing the NOV are brought to agency counsel's attention, the subsequent action normally should include the FULL sanction proposed in the NOV. If agency counsel determines that a reduced sanction amount is appropriate based on the information provided by the respondent, the reduction shall be taken from the full amount of the proposed civil penalty, not the reduced sanction amount that may have been offered as an immediate settlement.

f. Compromise order. Under section 13.16(1)(1), agency counsel has the authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. In such a case, a compromise order is issued. The compromise order states that the respondent agrees to pay a civil penalty, that the FAA makes no finding of violation, and that the order shall not be used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding. See Figure 3, "Sample Compromise Order."

g. Final notice of violation and civil penalty assessment order. If a respondent does not timely respond to the NOV, or if during informal procedures no agreement is reached for resolving the case, a final notice of violation and civil penalty assessment order ("final notice and order") is issued. See Figure 4, "Sample Final Notice of Violation and Civil Penalty Assessment Order." This document provides the respondent one last opportunity to

request a hearing. It also becomes an order assessing a civil penalty if the respondent pays the civil penalty proposed in the final notice and order, or the respondent does not request a hearing in accordance with the final notice and order and fails to pay the amount of the proposed civil penalty. The final notice and order shall be issued by an Assistant Chief Counsel who has authority to initiate and assess civil penalties.

(1) Contents. The final notice and order should state the facts and statutory and regulatory violations that are alleged in the NOV, and the penalty proposed, unless information received during informal procedures warrants modification of the allegations or proposed penalty. Absent additional, relevant information that agency counsel and the program office determine warrants a modification of the proposed penalty, the final notice and order should include the FULL amount of civil penalty proposed in the NOV. The final notice and order must clearly explain that it becomes an order assessing civil penalty if respondent does not request a hearing or pay the full amount of civil penalty within 15 days. The final notice and order also should state that it becomes an order assessing civil penalty if the respondent pays the amount of civil penalty reflected in the final notice and order. All required debt collection notices should be included in the final notice and order.

(2) Response. The final notice and order offers the following options: (1) pay the proposed civil penalty or (2) request a hearing.

(3) Service. The final notice and order is sent to the respondent or to the person the respondent has designated to receive documents in that civil penalty action. The final notice and order should be sent by certified mail, return receipt requested or personal delivery. If the final notice and order is returned as undeliverable, the Assistant Chief Counsel's office may request the Civil Aviation Security regional office to take appropriate steps to verify the address. The final notice and order then should be resent immediately by certified mail, return receipt requested and regular mail to the most recent, available address for the respondent.

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(4) Time for submission of a response by the respondent. Section D of SFAR No. 72 requires the respondent to submit a response to the final notice and order not later than 15 days after receipt. For purposes of this regulation, timely submission of a response is deemed to have occurred when the response is either put in the mail or personally delivered. Therefore, if on the 15th day after receipt of the final notice and order the respondent places a response in the mail, the response is timely.

h. Order assessing civil penalty.

(1) Issuance by Assistant Chief Counsel. An order assessing civil penalty orders the payment of the specified penalty regardless of whether payment of the penalty has been received by the FAA. The order should set forth the findings of fact, the statutory and regulatory violations, and the amount of the penalty assessed. See Figure 5, "Sample Order Assessing Civil Penalty." An order assessing civil penalty is issued by an Assistant Chief Counsel when the person charged with a violation submits, or agrees to submit, the penalty reflected in the NOV or an agreed-upon amount of civil penalty other than the penalty that is reflected in the NOV or final notice and order (in cases where settlement is reached after issuance of an NOV or a final notice and order). Receipt of the amount should be acknowledged in the order if payment is made prior to issuance of the order.

(2) Final agency action. If the administrative law judge finds that a violation occurred and determines that a civil penalty is warranted, in an amount found appropriate by the judge, and that decision is not timely appealed, the initial decision becomes an order assessing civil penalty. Similarly, if on appeal the FAA decisionmaker issues a final decision finding that a violation occurred and a civil penalty is warranted, and a timely petition for judicial review is not filed, the Administrator's decision is considered an order assessing civil penalty. In either event, the letter found at Figure 6, "Sample Follow-up Letter," should be sent.

i. Guidance for immediate settlement of weapons cases arising from violations at airports not identified in the streamlined enforcement test and evaluation program.

In cases involving allegations and an amount of proposed civil penalty described in paragraph a. of this bulletin, when appropriate, an Assistant Chief Counsel may agree to resolve the case immediately with a reduction of the proposed civil penalty, on the condition that within 30 days from receipt of the Notice of Proposed Civil Penalty, respondent pays the penalty or agrees to issuance of an order assessing civil penalty in the reduced penalty amount. Generally, this reduced penalty amount will be 50 percent of the proposed civil penalty. The settlement may be agreed to in all cases except those where the FAA determines that the respondent has a history of involvement in similar incidents; the information available indicates that the violation was intentional; or the FAA has reason to believe that felony charges against the respondent may result based on the facts and circumstances surrounding the violation. In cases where the reduction is appropriate, the notice of proposed civil penalty should be accompanied by a cover letter found at Figure 7 "Sample Cover Letter," informing the respondent of the possibility of settling the case immediately.

The reduced settlement offer expires if the amount is not paid within 30 days, or if, within 30 days, respondent does not request issuance of an order assessing civil penalty in the reduced penalty amount. If the settlement amount is not paid within 30 days, or if, within the 30-day period, the respondent does not request issuance of an order assessing civil penalty in the reduced penalty amount, the respondent is subject to the full amount of the civil penalty proposed in the Notice of Proposed Civil Penalty.

If settlement discussions ensue after the 30-day deadline for payment, absent evidence indicating a financial inability to pay, or some other extraordinary circumstance, the case should not be settled for an amount that would represent a reduction of 50 percent or more of the proposed civil penalty.

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FIGURE 1. NOTICE OF VIOLATION

<b>DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION</b>	
NOTICE OF VIOLATION	
<b>To:</b> (Name and address)   <b>Date of Violation:</b> _____ <b>Local Time:</b> _____ am/pm <b>Location:</b> _____ <b>Airport:</b> _____  <b>Terminal:</b> _____ <b>Checkpoint:</b> _____  <b>City:</b> _____ <b>State:</b> _____	<div style="border: 1px solid black; padding: 5px;"> <b>Civil Penalty Amount</b>          Based on the following facts and information, it appears that you violated 49 U.S.C. §46303 and/or specified sections of the Federal Aviation Regulations (FAR). As a result, it has been determined that legal enforcement action is warranted. Passengers may be subject to a maximum civil penalty in the amount of \$11,000 per incident. Non-passengers are subject to a maximum civil penalty in the amount of \$1,000 per violation (see 49 U.S.C. §46301). Based on the information below, we propose to assess you a civil penalty in the amount of:       </div> <div style="border: 1px solid black; padding: 5px; text-align: center; margin-top: 10px;">         \$ _____       </div>
DESCRIPTION OF INCIDENT	
An investigation by the Federal Aviation Administration has been conducted and after consideration of all available information it appears that:	
<input type="checkbox"/> On the date of violation indicated above, you were a ticketed passenger on _____ airline, flight # _____, and presented yourself and your accessible property for inspection before entering a sterile area at the location identified above. During the screening of you and your accessible property, an undeclared, _____ (Make/Model of Firearm) or _____ (Weapon) was discovered. (Loaded/Unloaded)	
<input type="checkbox"/> On the date of violation indicated above, you presented yourself and your accessible property for inspection before entering a sterile area at the location identified above. During the screening of you and your accessible property, an undeclared, _____ (Loaded/Unloaded) _____ (Make/Model of Firearm) or _____ (Weapon) was discovered.	
<input type="checkbox"/> On the date of violation indicated above, you tendered for transport a loaded _____ in checked baggage aboard an airplane at the location identified above. (Make/Model of Firearm)	
<input type="checkbox"/> On the date of violation indicated above, you tendered for transport an undeclared, unloaded _____ in checked baggage aboard an airplane at the location identified above. (Make/Model of Firearm)	
If you have questions concerning this Notice of Violation, you may contact _____ at _____ (Special Agent) _____ (Phone Number)	
VIOLATION	
<input type="checkbox"/> <b>PASSENGER</b> 49 U.S.C. §46303 prohibits persons from having on or about their persons or accessible property a concealed deadly or dangerous weapon while aboard or attempting to board any aircraft in or intended for operation in air transportation or intrastate air transportation. Section 107.21(a) of the FAR, 14 C.F.R. 107.21(a), provides that no person may have a deadly or dangerous weapon on or about the individual's person or accessible property when performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, and when entering or in a sterile area.	
<input type="checkbox"/> <b>NON-PASSENGER</b> Section 107.21(a) of the FAR provides that no person may have a deadly or dangerous weapon on or about the individual's person or accessible property when performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, and when entering or in a sterile area.	
CHECKED BAGGAGE	
<input type="checkbox"/> Section 108.11(c) of the FAR prohibits any person from transporting or tendering for transport a loaded firearm in checked baggage aboard an airplane.	
<input type="checkbox"/> Section 108.11(d) of the FAR prohibits any person from transporting or tendering for transport an undeclared, unloaded firearm in checked baggage aboard an airplane.	
PAYMENT	
<input type="checkbox"/> If, within 30 days of receipt of this notice, you pay or agree to issuance of an order in accordance with the instructions on the enclosed option sheet, the Federal Aviation Administration will accept \$ _____ in full resolution of the enforcement action. Enclosed is an option sheet explaining your options in responding to this Notice. If, within 30 days, you do not pay this amount or agree to issuance of an order, the proposed civil penalty amount found at the top of this page will be sought.	
<input type="checkbox"/> You may pay the proposed penalty amount found at the top of this page within 30 days of receipt of this Notice. Enclosed is an option sheet explaining your options in responding to this Notice should you decide not to remit payment within 30 days.	
Division or Deputy Division Manager Signature & Date	Case Number

**FIGURE 2. OPTION SHEET**

Name: \_\_\_\_\_

Date: \_\_\_\_\_ Case No.: \_\_\_\_\_

**IMPORTANT: FILL OUT THIS OPTION SHEET AND RETURN IT WITHIN  
30 DAYS TO:**

Office of the Assistant Chief Counsel for the \_\_\_\_\_ Region  
Federal Aviation Administration  
Street Address  
City, State, Zip

Please find enclosed with this option sheet: a Notice of  
Violation, section 13.16 and part 13 subpart G of the  
Federal Aviation Regulations, and Special Federal Aviation  
Regulation No. 72.

**Notice of Violation  
Option Sheet**

In reply to your Notice of Violation, I elect to proceed as  
indicated by my check mark beside the numbered paragraph(s)  
below:

1. **I choose to pay the proposed civil  
penalty.**

/\_\_\_/ I hereby submit a certified check or money order  
payable to the Federal Aviation Administration in  
the amount of the proposed civil penalty stated in  
the Notice of Violation with the understanding  
that an order assessing civil penalty will be  
issued in that amount without further notice, and  
that I waive my right to a hearing.

I am sending the payment, with the case  
number written on the face of the check or  
money order to:

Office of Accounting

\_\_\_[address]\_\_\_\_\_

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Name: \_\_\_\_\_

Date: \_\_\_\_\_ Case No.: \_\_\_\_\_

/\_\_\_/ I request that an order assessing civil penalty be issued in the amount of the proposed civil penalty stated in the Notice of Violation without further notice and with the understanding that I waive my right to a hearing. I understand that payment of the penalty will be due 30 days from my receipt of the order.

[PLEASE NOTE: If the box checked under the PAYMENT section of the Notice of Violation indicates that the FAA will accept a reduced sanction amount, you must agree to one of the above options and return this form within 30 days. If you do not pay the penalty within 30 days, or, within 30 days, you do not request issuance of an order assessing civil penalty in the reduced penalty amount, the FAA will seek the full penalty amount found in the shaded box at the top of the Notice of Violation.]

2. /\_\_\_/ I am submitting evidence for your consideration. I hereby submit evidence and information demonstrating that a violation of the regulations did not occur as alleged or that the amount of the penalty is not warranted by the circumstances.
3. /\_\_\_/ I am submitting information for your consideration in support of a reduction of the civil penalty. I hereby submit a written request for a reduction of the civil penalty. I am including the amount of the requested reduction in my written request; I am also submitting information and records (including last year's Federal income tax returns) with my written request showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.



4. /\_\_\_/ **I request an informal conference with an agency attorney.**

( ) I hereby request to discuss this matter informally, by telephone, with an FAA attorney. (One of our attorneys will call you at a telephone number you provide here ( ) \_\_\_\_\_. You will be provided at least 2 weeks advance notice of the date and time of this conference.)

( ) I hereby request to discuss this matter in person at an informal conference with an attorney at an FAA office located in \_\_\_\_\_, or a mutually convenient location.

**NOTE: If you choose to discuss this matter informally by telephone, you should provide in advance any documents or other information you wish to be considered on your behalf.**

5. /\_\_\_/ **I request a formal hearing.**

I hereby request a formal hearing before an administrative law judge in accordance with subpart G of Part 13 of the Federal Aviation Regulations with the understanding that a complaint will be filed by the FAA. I request the hearing to be held in \_\_\_\_\_. I am sending a copy of this request to the "Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk."

Signature: \_\_\_\_\_

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_

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Case No: \_\_\_\_\_

IF YOU ARE BEING REPRESENTED BY AN ATTORNEY OR OTHER  
REPRESENTATIVE:

/\_\_\_/ I request that future documents be sent to my  
attorney/representative at:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**FIGURE 3****SAMPLE COMPROMISE ORDER**CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley  
22 Caliber Way  
Pistol, South Gun 00000

Re: Case No. 90NM7785391

COMPROMISE ORDER

On \_\_\_\_\_, you were advised through a Notice of Violation that the FAA proposed to assess a civil penalty in the amount of \$\_\_\_\_\_.

After further consideration, the parties have agreed to settle this matter by the payment of a civil penalty by you, without the FAA making a finding of violation. This settlement does not constitute an admission by you of the truth of any allegations set forth in the Notice of Violation.

This compromise order shall not be used as evidence by the FAA of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

NOW, THEREFORE, IT IS AGREED, pursuant to Title 49 U.S.C. section(s) 46301 [**Add, if appropriate:** and 46303], that you shall pay a civil penalty in the amount of \$\_\_\_\_\_.

[Include one of the following:]

You have executed a promissory note agreeing to pay the agreed-upon amount by mailing or delivering a certified check or money order in the amount of \$\_\_\_\_\_, payable to the Federal Aviation Administration, to Office of Accounting, address, [no later than **Date**] or [in accordance with the installment payment schedule set forth in the promissory note].

[or]

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We hereby acknowledge receipt of your check in the amount of  
\$ \_\_\_\_\_, which we accept in full settlement of  
this matter. You may consider this matter closed.

Assistant Chief Counsel

By: \_\_\_\_\_

**FIGURE 4**

**SAMPLE FINAL NOTICE OF VIOLATION  
AND CIVIL PENALTY ASSESSMENT ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley  
22 Caliber Way  
Pistol, South Gun 00000

Re: Case No. 90NM7785391

**Final Notice of Violation  
and Civil Penalty Assessment Order**

On \_\_\_\_\_, you were advised through a Notice of Violation that the FAA proposed to assess a civil penalty against you in the amount of \$\_\_\_\_\_.

[As of the date of this final notice, we have received no response to the Notice of Violation. After consideration of the information available to us, it has been determined that:]

or

[After consideration of the information that you submitted in response to the Notice of Violation, it has been determined that:]

1. [Recitation of the facts--taken from DESCRIPTION OF INCIDENT from the Notice of Violation (or as modified after receiving other information)]

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

- a. [Recitation of the regulation(s) and/or statutory provisions violated--taken from REGULATIONS CITED from the Notice of Violation (or as modified after receiving other information).]

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In accordance with Title 49 U.S.C. section 46301, you are subject to a civil penalty not to exceed \$1,000 for each violation of the regulations. [Add, if appropriate: In addition, under section 46303 (49 U.S.C. section 46303), you are subject to a civil penalty not to exceed \$10,000 for each violation of section 46303.] By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of \$\_\_\_\_\_.

Within 15 days after your receipt of this final notice, you must elect either to submit the full civil penalty amount or request a hearing in writing. IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 15 DAYS, THIS FINAL NOTICE WILL SERVE AS AN ORDER ASSESSING A CIVIL PENALTY IN THIS MATTER in the amount of \$\_\_\_\_\_ and you will have no further right to a hearing. The amount of civil penalty assessed in this order will constitute a debt owed to the United States and must be paid within 46 days of receipt of this notice. IF YOU FAIL TO REQUEST A HEARING WITHIN 15 DAYS, YOU WILL HAVE EXHAUSTED YOUR RIGHT TO SEEK REVIEW OF THE VALIDITY OR AMOUNT OF THIS DEBT.

Should you elect to submit the civil penalty, please mail or deliver a copy of this final notice, along with a certified check or money order payable to the Federal Aviation Administration, to: Office of Accounting, [street, city, state, zip]. This final notice will serve as an order assessing a civil penalty in this case.

Should you elect to request a formal hearing, you must file a typewritten or legibly handwritten request for hearing with the hearing docket clerk at: Hearing Docket, Attention: Federal Aviation Administration, 800 Independence Ave., SW., Room 924A, Washington, DC 20591 Attention: Hearing Docket Clerk. You must also mail a copy of your request for hearing to the undersigned attorney at [street, city, state, zip]. Your request must be dated and signed, in accordance with section 13.16 of the Federal Aviation Regulations (14 C.F.R. 13.16). A copy of 14 C.F.R. 13.16 and part 13, subpart G of the Federal Aviation Regulations were enclosed with the Notice of Violation.

As noted, this Final Notice of Violation and Civil Penalty Assessment Order will constitute an order assessing a civil penalty if you fail to respond with one of the alternatives described above within 15 days of your receipt of this final notice. You are also advised that if you do not timely file a request for a hearing, and this debt is not paid in full within 46 days of your receipt of this final notice, this debt will be considered delinquent. For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest from the date of delivery of notice of the debt. Please be advised that interest will begin to accrue 16 days after your receipt of this final notice if this civil penalty is not paid by the due date. The interest will be charged at a fixed annual rate of \_\_\_\_\_ percent, along with an administrative charge of \$ \_\_\_\_\_ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of the date that this final notice becomes an order assessing a civil penalty, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

Assistance Chief Counsel

By: \_\_\_\_\_  
Attorney

Enclosures

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*Figure 5*

**SAMPLE ORDER ASSESSING CIVIL PENALTY  
(For use in the Streamlined Enforcement  
Test and Evaluation program)**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley  
22 Caliber Way  
Pistol, South Gun 00000

Re: Case No. 93NM76891  
[S.S. No. ###-##-####] or [IRS EIN]

ORDER ASSESSING CIVIL PENALTY

On [Date], you were advised through a [Final Notice of Violation and Civil Penalty Assessment Order] or [Notice of Violation] that the FAA proposed to assess a civil penalty in the amount of \$\_\_\_\_\_.

After consideration of all of the available information, including the information you presented [at the informal conference held on [Date]], it has been determined that:

**Insert either:** [Recitation of the facts--taken from DESCRIPTION OF INCIDENT from the Notice of Violation (or as modified after receiving other information) and recitation of the regulation(s) and/or statutory provisions violated --taken from REGULATIONS CITED from the Notice of Violation (or as modified after receiving other information)] or [findings of fact and violation(s) stated in the Final Notice of Violation and Civil Penalty Assessment Order.]

NOW, THEREFORE, IT IS ORDERED, pursuant to Title 49 U.S.C. section(s) 46301 [Add, if appropriate: and 46303], that you be and hereby are assessed a civil penalty in the amount of \$\_\_\_\_\_.

[Include one of the following:]



You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of \$\_\_\_\_, payable to "The Federal Aviation Administration," to Office of Accounting, address. This Order Assessing Civil Penalty constitutes a debt owed to the United States. You have now exhausted your right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this order is delivered, at a fixed annual rate of \_\_\_\_\_ percent, along with an administrative charge of \$\_\_\_\_\_ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this order, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency. Delinquent debts will be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of \$\_\_\_\_, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: \_\_\_\_\_  
Attorney

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**FIGURE 6 SAMPLE FOLLOW-UP LETTER**

[SAMPLE follow-up letter to Final DOT ALJ initial decision, or FAA decisionmaker decision. This letter serves as the first required written demand after judgment.]

[Date]

Case No. XX##XXXXXX

[S.S.No. ###-##-####] or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: NAME

ADDRESS

On [Date], [an administrative law judge] [the FAA decisionmaker] issued a decision in this case. That decision, which you did not [appeal] or [petition the Court of Appeals to review], constitutes an Order Assessing Civil Penalty in the amount of \$\_\_\_\_\_.

This Order Assessing Civil Penalty constitutes a debt owed to the United States. You have exhausted your right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent.

For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this notice is delivered, at a fixed annual rate of \_\_\_\_\_ percent, along with an administrative charge of \$ \_\_\_\_\_ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency.

Delinquent debts will be reported to consumer reporting agencies or commercial credit bureaus, which

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Appendix 1

could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

If you have any questions concerning this matter, you may contact me at (###) ###-####.

Sincerely,

FAA Attorney

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**FIGURE 7 SAMPLE COVER LETTER**

[SAMPLE cover-letter to respondent offering immediate settlement of proposed civil penalty, to be sent with the Notice of Proposed Civil Penalty in appropriate cases, or to offer settlement in appropriate cases already pending.]

[Date]

Case No. XX##XXXXXX

[S.S.No. ###-##-####] or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: NAME

ADDRESS

**Insert either:**

[Enclosed please find a Notice of Proposed Civil Penalty, in which we propose to assess a civil penalty against you in the amount of \$\_\_\_\_\_.]

**or**

[On \_\_\_\_ [Date] \_\_\_\_ you were advised through a Notice of Proposed Civil Penalty that the FAA proposes to assess a civil penalty in the amount of \$\_\_\_\_\_ . ]

Please be advised that the Federal Aviation Administration is willing to settle this matter immediately for \$ [50 percent of the proposed penalty] if you pay this amount within 30 days from receipt of this letter, or if you agree, within 30 days from receipt of this letter, to issuance of an order assessing civil penalty in this amount.

You may send your payment, **with the case number written on the face of the check or money order to:**

**Office of Accounting**

\_\_ [address] \_\_\_\_\_

Please notify the undersigned attorney at the address or telephone number below if you are sending payment to the above address.

Within 30 days from receipt of this letter, you may also request that we issue an order assessing civil penalty in the reduced penalty amount of \$ [ 50 percent of proposed penalty ] . Payment will be due 30 days from your receipt of the order. Please send your request to the undersigned attorney at:

\_\_\_\_\_

\_\_\_\_\_

This offer of settlement is being made in the interest of resource and judicial economy. If, within 30 days, you do not pay the reduced amount offered above or request issuance of an order assessing civil penalty in the reduced amount offered above, the offer expires and we will continue this action, but will seek the full amount of the penalty reflected in the Notice of Proposed Civil Penalty.

**If sending letter with the Notice of Proposed Civil Penalty, add:**

[Please refer to the option sheet included with the Notice of Proposed Civil Penalty for information regarding other options you have in responding to the notice. You must respond in accordance with the option sheet within 30 days.]

If you choose to pay the reduced penalty amount within 30 days, or within 30 days, you request that we issue an order assessing the reduced penalty amount, you will waive your right to a hearing, and the case will be closed.

If you would like further information regarding immediate payment of the reduced civil penalty offered in this letter, please contact the undersigned attorney at ###-###-####.

Sincerely,

FAA ATTORNEY





